

SECTION 14: DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

A. Purpose.

The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3.

B. Divisions of Land Entirely Exempt from the Requirements of These Regulations and the MSPA.

Unless the method of disposition is adopted for the purpose of evading these Regulations or the MSPA, the requirements of these Regulations and the Montana Subdivision and Platting Act may not apply when:

1. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30;
 - a. Before a court or record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.
2. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
3. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
4. A division of land creates cemetery lots;
5. A division of land is created by the reservation of a life estate;
6. A division of land is created by lease or rental for farming and agricultural purposes;
7. A division of land is in a location over which the state does not have jurisdiction;

8. A division of land is created for public rights-of-way or public utility sites;
9. The land upon which an improvement is situated has been subdivided in compliance with these regulations and the Montana Subdivision and Platting Act, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land;
10. Condominiums are constructed on land divided in compliance with these regulations and the Montana Subdivision and Platting Act provided that:
 - a. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621, M.C.A. is complied with; or
 - b. The condominium proposal is in conformance with applicable zoning regulations.
11. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land;
12. A division of land created by lease or rental of contiguous airport-related land owned by a city, county, the state, or a municipal or regional airport authority provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities;
13. A division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974;
14. Deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.

C. Specific Exemptions from Review But Subject to Survey Requirements.

Unless the Commission determines the request for use of an exemption for subdivision review is for the purpose of evading these Regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the Montana Subdivision and Platting Act, but are subject to the surveying requirements of 76-3-401, MCA, for lands not amounting to subdivisions. A division of land may not be made under this section unless the County Treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be divided are delinquent and the County Commission has approved the request at a public hearing. The County Clerk and Recorder shall

notify the Planning Department of any land division described in this section or 76-3-207 (1), MCA.

1. Divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;
2. Divisions made outside of platted subdivisions by gift, sale, or a agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the County and the property owner that the divided land will be used exclusively for agricultural purposes;
3. Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;
4. Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas; and
5. For 5 or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots.

D. Exemptions from Surveying and Filing Requirements But Subject to Review.

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of these Regulations but must be submitted for review and approved by the County Commission before portions thereof may be rented or leased, except for when:

1. The approval of the original division of land expressly contemplated the construction of the condominiums and applicable park dedication requirements of 76-3-621 M.C.A. are complied with; or
2. The condominium proposal is in conformance with applicable zoning regulations.

E. Exemption from Surveying and Platting Requirements for Lands Acquired for State Highways.

Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 M.C.A. and are exempted from the surveying and platting requirements of these regulations and the Montana Subdivision and Platting Act. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

F. Procedures and General Requirements.

The following procedures, criteria and requirements shall be used to review an exemption claim from subdivision review and to determine whether the division of land is for the purpose of evading the Act.

1. The Commission designates the Planning Department as its agent for purposes of these Regulations. All certificates of survey claiming an exemption shall be submitted to the Planning Department. The procedures and requirements of this Subsection are limited to the exemptions specified in these Regulations.
2. A claimant seeking an exemption under the Act and these Regulations shall submit a claim on the appropriate application form, including a signed certificate of exemption, together with evidence to support the claim and any other information required by these Regulations to the Planning Department. Six paper copies of the certificate of survey shall be submitted with the claim and shall be folded to fit in a standard eight and a half to nine by eleven (8½" to 9" x 11") or eight and a half to nine by fourteen (8½" to 9" x 14") folder. The required review fee, according to the fee schedule approved by the Commission under a separate document, shall be submitted with each exemption claim.
3. The claimant or the claimant's representative shall be notified of the date and time of the hearing provided for in this Subsection.
4. The Planning Department, Environmental Health Department, the Clerk and Recorder, and the County Attorney's Office shall review the claimed exemption. The Planning Department shall make a report to the Commission. The report shall be made available by the Planning Department to the claimant or the claimant's representative on or before the day before the hearing set by the Commission to hear the report. The claimant may request a continuance of the hearing.

5. At the hearing by the Commission to hear the report, the claimant may present evidence in support of the exemption. The Commission shall allow or disallow the exemption within 30 working days of its submission to the Planning Department unless the claimant has requested a continuance of the hearing in which case this time limit shall not apply.
6. Where a rebuttable presumption to evade the Act is declared in these Regulations, the presumption may be overcome by the claimant with evidence contrary to the presumption. If the Commission concludes that the evidence overcomes the presumption and that from all the circumstances the exemption is justified, the Commission will allow the exemption. On the other hand, if the Commission concludes that the presumption is not overcome and that from all the circumstances the exemption is not justified, the Commission will disallow the exemption.
7. In assessing the claimant's purpose the Commission will evaluate all relevant circumstances including the nature of the claimant's business and use of the parcel, the prior history of the particular tract in question, the proposed configuration of the tract(s) if the proposed exempt transactions are completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.
8. If the exemption is allowed, the Commission shall so certify in a printed certificate on the certificate of survey.
9. If the exemption is disallowed, the Commission shall provide written notification of its decision to the person claiming the exemption and the Clerk and Recorder.
10. A certificate of survey of a division of land which is exempted from review may not be filed by the Clerk and Recorder unless it bears the certificate of the person having a recorded interest claiming the exemption stating that the division of land is exempted from review as a subdivision and citing the applicable exemption.
11. Each newly created parcel less than 160 acres shall have a certificate of exemption.
12. These Regulations shall not be applicable to deeds, contracts, leases or other conveyances executed prior to July 1, 1974.
13. An exemption may not be requested or made under this section, except for Security for Construction Financing and Court Orders, unless the Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

G. Exemptions as a Gift or Sale to a Member of the Immediate Family.

1. A member of the immediate family is the spouse of the grantor, or, whether by blood or adoption, a son, daughter, mother, or father of the grantor.
2. The proper use of the exemption as a gift or sale to a member of the immediate family is to convey one parcel of land outside of a platted subdivision to each member of the landowner's family, providing that the use of the exemption creates no more than one additional or remaining parcel of less than 160 acres in size. The parcel involved in the division must be outside of a platted subdivision. Each exemption under this Section will be reviewed by the Commission under these Regulations.
3. A certificate of survey for a family transfer may include more than one exempt parcel providing all parcels meet the criteria of this Section.
4. Certificates of survey showing the creation of new parcels of land pursuant to this exemption as a gift or sale to a member of the immediate family must be accompanied by a copy of the deed transferring interest in the parcel being created or a statement detailing where the deed is in escrow, how long it will be in escrow and authorization to contact the escrow agent for verification.
5. A rebuttable presumption exists when a family transfer is adopted for the purpose of evading the Act if it is determined that one or more of the following conditions exist:
 - a. The exempted parcel would leave more than one additional parcel of less than 160 acres.
 - b. The member of the landowner's immediate family would have received more than one exempted parcel in the County.
 - c. The exempted parcel is being divided from a tract that was previously created through the use of an exemption, including remaining tracts of less than 160 acres, and creates a pattern of development consistent with an overall plan with characteristics such as common roads, utility easements, restrictive covenants, open space or common marketing.

H. Agricultural Exemption.

1. An agricultural exemption is a division of land made outside of a platted subdivision by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land, revocable only by mutual consent of the Commission and the transferee/property owner, that the divided land will be used exclusively for agricultural purposes. No building or structure requiring water or sewer facilities shall be utilized on such a parcel. The parcel involved in the division must be outside of a platted subdivision.
 - a. A change in use of the land for anything other than agricultural purposes subjects the division to these Regulations.

I. Relocation of Common Boundary Lines.

Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties, and divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision.

1. The proper use of the exemption for relocating common boundary lines is to:
 - a. Establish a new boundary between adjoining parcels of land, without creating an additional parcel; or
 - b. Establish a new common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
2. Certificates of Survey showing the relocation of common boundary lines must be accompanied by:
 - a. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and
 - b. Documentation showing the need or reason for the relocation (for example: structure encroachment or surveyor error).
3. A rebuttable presumption exists when a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:

- a. The Commission determines that the documentation submitted according to this section does not support the stated reason for relocation or created an additional parcel, and/or
- b. The Certificate of Survey for the relocation of common boundary lines significantly rearranges multiple parcels with little or no resemblance to the original configuration of the parcels.

J. Aggregation of Lots and/or Relocation of Common Boundaries within a Platted Subdivision.

- 1. The proper use of the exemption for aggregation of lots and/or relocation of common boundaries is to rearrange and/or aggregate five or fewer lots within a platted subdivision and does not increase the total number of lots. The plat shall contain the title “Amended Plat” and must be filed with Clerk and Recorder.
- 2. The Amended Plat showing the aggregation of lots and/or relocation of common boundary within a platted subdivision must be accompanied by:
 - a. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and
 - b. Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error or enhancement of the configuration of the property).
- 3. A rebuttable presumption exists when a proposed aggregation of lots and/or relocation of common boundaries within a platted subdivision is adopted for the purpose of evading the Act if it determines that six or more lots are affected by the proposal.
- 4. Any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the Commission prior to the filing of the final plat.

K. Security for Mortgages, Liens, or Trust Indentures for the Purpose of Construction, Improvements to the Land Being Divided, or Refinancing Purposes.

- 1. The proper use of the exemption is to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes, when a survey of the parcel has been required.

2. A rebuttable presumption exists when a division of land that is created to provide security is adopted for the purpose of evading the Act under the following conditions:
 - a. If the division of land is created for the purpose of conveyance;
 - b. The financing is for construction on land other than on the exempted parcel;
 - c. The person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed is anyone other than the borrower of funds for construction;
 - d. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or
 - e. It appears that the principle reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.
3. When the security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes exemption is to be used, the landowner shall submit, in addition to such other documents as may be required, a written statement explaining:
 - a. How many parcels within the original tract will be created by use of the exemption.
 - b. Who will have title to and possession of the remainder of the original parcel.
 - c. A signed and notarized statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel, or refinancing purposes.
4. The exempted parcel may be of any size, providing that the parcel size is in compliance with any officially adopted zoning regulation.
5. The exempted parcel shall be delineated by a dotted line within the survey.
6. The written statement of lending institution and the instruments creating the security shall be filed at the same time with the Clerk and Recorder.

7. A transfer of the exempted parcel, by the owner of the property at the time that the land was divided, to any party other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture, subjects the division of land to the requirements of these Regulations.

L. Court Order.

1. The proper use of this exemption is when the division of land is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, when a survey of the parcel has been required.

M. Correction of Errors. Corrections of errors that in the opinion of the Clerk & Recorder will not materially alter the survey may be made by the submission of a corrected certificate of survey to be filed in the Office of the Clerk & Recorder.

N. Uniform Standards for Certificate of Survey. A certificate of survey may not be filed by the Clerk and Recorder unless it complies with the requirements of ARM 8.94.3002 Uniform Standards for Certificates of Survey.

O. Procedures and Review of Subdivision Exemptions.

1. Submittal. Any person seeking exemption from the requirements of the MSPA shall submit to the Planning Department a certificate of survey, the completed application form, and required fee. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)
2. Review. A division of land for which an exemption is claimed is submitted to the Planning Department for review by the designated agents of the governing body (e.g., county attorney, sanitarian, planning department, treasurer, and clerk and recorder). The Planning Department and the County Commission shall review the claimed exemption to verify that it is the proper use of the claimed exemption. The County Commission shall determine at a public hearing whether the request complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these Regulations prior to the filing of the certificate of survey with the Clerk and Recorder.